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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 IN RE HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

Case No. 5:11-cv-2509-LHK

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15 THIS DOCUMENT RELATES TO:
16 ALL ACTIONS
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**PIXAR AND LUCASFILM'S JOINT
RESPONSE TO PLAINTIFFS'
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL PLAINTIFFS' REPLY IN
SUPPORT OF SUPPLEMENTAL
MOTION FOR CLASS CERTIFICATION**

Pursuant to N.D. Cal. Civ. L.R. 7-11 and 79-5, Defendants Pixar and Lucasfilm Ltd. (“Lucasfilm”) hereby jointly move to seal portions of the Rebuttal Supplemental Expert Report of Edward E. Leamer (“Leamer Rebuttal Supplemental Report”), and Pixar moves to seal portions of Exhibit I to the Declaration of Anne B. Shaver in Support of Plaintiffs’ Supplemental Motion for Class Certification (“Shaver Decl.”). Pixar also moves to seal in its entirety Exhibit 1304 to the Shaver Decl.

The information Pixar and Lucasfilm seek to seal has been designated Confidential and/or Attorneys-Eyes Only under the Stipulated Protective Order (Modified by the Court) (Dkt. No. 107). Lucasfilm’s declaration in support of its sealing request is attached as Exhibit A, and Pixar’s declaration in support of its sealing request is attached as Exhibit B.

I. LEGAL STANDARD

Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial court to permit sealing of court documents for, inter alia, the protection of “a trade secret or other confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has “carved out an exception to the presumption of access to judicial records for a sealed discovery document [attached] to a nondispositive motion,” where the requesting party shows good cause exists to keep the records under seal. *Navarro v. Eskanos & Adler*, No. C-06 02231, 2007 WL 902550, at *6 (N.D. Cal. March 22, 2007) (citing *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (“[A] ‘particularized showing’ under the ‘good cause’ standard of Rule 26(c) will ‘suffice[] to warrant preserving the secrecy of sealed discovery material attached to nondispositive motions.’”); *see also Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2009) (“In light of the weaker public interest in nondispositive materials, we apply the ‘good cause’ standard when parties wish to keep them under seal.”).

II. GOOD CAUSE EXISTS TO SEAL PIXAR’S AND LUCASFILM’S CONFIDENTIAL INFORMATION

The proposed redacted portions of Plaintiffs’ reply papers contain confidential and commercially sensitive information about employee compensation, including Pixar’s and Lucasfilm’s compensation data, as well as information that reflects internal decision-making

1 regarding business strategies related to compensation. Further, some of the proposed redacted
 2 portions of Plaintiffs' exhibits contain personal identifying information of employees and their
 3 specific salaries and increases. Pixar and Lucasfilm designated the foregoing information
 4 "Confidential" and/or "Attorneys Eyes Only" under the Protective Order.

5 As Pixar's and Lucasfilm's supporting declarations demonstrate, Pixar and Lucasfilm kept
 6 the redacted information confidential and the public disclosure of this information would cause
 7 Pixar and/or Lucasfilm harm by giving third-parties (including individuals responsible for
 8 competitive decision-making) insights into confidential and sensitive aspects of Pixar's and/or
 9 Lucasfilm's strategies, competitive positions, and business operations, allowing these third-
 10 parties to potentially gain an unfair advantage in dealings with and against Pixar and/or
 11 Lucasfilm.

12 Compensation policies, practices and decisions are routinely subject to a sealing order.
 13 *In re Wells Fargo Loan Processor Overtime Pay Litig.*, No. C 07-01841, 2008 WL 2397424, at
 14 *5 (N.D. Cal. June 10, 2008) (noting that a "compensation policy" was filed under seal); *Hertz*
 15 *Equip. Rental Co. v. Useda*, No. CV-10-4953, 2010 BL 259718, at *2 (N.D. Cal. Nov. 02, 2010)
 16 (granting a temporary restraining order to enjoin a former employee from using a company's
 17 "confidential and/or trade secret employee compensation information").

18 Further, specific employee salary information is regularly sealed because of its
 19 confidential and private nature. *See Renfro v. Unum*, No. 09-2661, 2010 BL 104197 (N.D. Cal.
 20 May 10, 2010) (granting a motion to seal records containing plaintiffs' salary information);
 21 *Nettles v. Farmers Ins. Exch.*, No. C06-5164, 2007 WL 858060, at *2 (W.D. Wash. Mar. 16,
 22 2007) (holding that salary review notices for third parties "who have not chosen to have their
 23 salary history placed into the public record" could be sealed.); *EEOC v. Kokh, LLC*, No. CIV-07-
 24 1043, 2010 WL 3155900, at *1 n.1 (W.D. Okla. Aug. 09, 2010) (noting that portions of summary
 25 judgment materials were filed under seal because they contained "confidential salary
 26 information"). In addition, good cause exists to seal the personal identifying information of third-
 27 party employees because they have not sought to make their identities known or placed in the
 28 public record. *Nettles* at *2 (holding that the interests of private parties outweighed the public's

1 right of access with respect to information pertaining to third party salary and employment
 2 separation information).

3 **III. CONCLUSION**

4 For the foregoing reasons, Pixar and Lucasfilm respectfully request that this Court order
 5 the requested portions of Plaintiffs' reply papers to be placed under seal.

6 In order to preserve the potential confidentiality of other defendants' information
 7 contained in the Leamer Rebuttal Supplemental Report, Pixar and Lucasfilm are not attaching a
 8 proposed redacted version to the instant motion or filing a proposed redacted version on ECF.
 9 Pixar's and Lucasfilm's proposed redactions to the Leamer Rebuttal Supplemental Report will be
 10 included in the proposed redacted version filed by the other defendants. Proposed redacted
 11 versions of Exhibits I and 1304 to the Shaver Decl. are attached as Exhibits C and D to this
 12 Motion and will also be filed separately on ECF. A proposed order is attached as Exhibit E.

13 Copies of the Leamer Rebuttal Supplemental Report and Exhibits I and 1304 to the
 14 Shaver Decl. showing Pixar's and Lucasfilm's proposed redactions highlighted in yellow will
 15 also be lodged with the Clerk in hard copy.

16 Dated: July 19, 2013

KEKER & VAN NEST LLP

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 19 By: /s/ Justina K. Sessions

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 Daniel Purcell
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9 **ATTESTATION:** The filer attests that concurrence in the filing of this document has been
obtained from all signatories.